APPEAL NO. 041765
FILED SEPTEMBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 16, 2004. The hearing officer determined that the respondent's (claimant herein) compensable injury of _____, extends to and includes injury to the cervical spine at the C3-4 and C4-5 levels, but does not extend to or include injury to the cervical spine at the C5-6 and C6-7 levels or to a bilateral shoulder injury.

The appellant self-insured (referred to as the carrier herein) appeals, contending that the C3-4 and C4-5 conditions were preexisting and there is no objective medical evidence which shows additional damage or harm to the physical structure of the body. The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a neck injury in 1990 and that he had continuing intermittent neck pain since. Whether the claimant continued to have those pains in the six months prior to the injury is disputed. It is also undisputed that on _____, the claimant sustained a compensable injury when a display case fell off a wall striking the claimant on the head. In dispute is whether pre and post 2003 injury MRIs show any changes. The carrier contends that the claimant's cervical herniations were all preexisting and the compensable injury did not do any additional damage or harm to the physical structure of the claimant's cervical spine. The hearing officer cites a report from a neurosurgeon and relies on the report of Dr. H, a Texas Workers' Compensation Commission-selected required medical examination doctor, who concluded that the compensable _____, injury aggravated a "symptomatic central disc herniation at C3-4 and C4-5." The carrier contends that opinion was based on a faulty or incorrect history.

There was conflicting evidence and the disputed issue involved a factual determination for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing

officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

TH
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge